



## MUTUAL NONDISCLOSURE AGREEMENT

This Mutual Nondisclosure Agreement (“Agreement”) is made as of the \_\_\_\_\_th day of \_\_\_\_\_, 20\_\_\_\_ (the “Effective Date”), by and between \_\_\_\_\_ (“COMPANY”) with offices at \_\_\_\_\_, and Auburn University (“AUBURN”), with offices at Office of Innovation Advancement and Commercialization, 570 Devall Drive, Suite 102, Auburn, Alabama 36832-6946, USA.

Whereas, the parties wish to enter into discussions related to \_\_\_\_\_ to evaluate the same for possible collaboration and/or commercialization (“Purpose”); and

Whereas, the parties recognize that in order to accomplish the Purpose, it may be necessary or appropriate for one party to disclose (the “disclosing party”) to the other (the “receiving party”), information or technology which is considered by the disclosing party to constitute its confidential or proprietary business secrets (“Confidential Information”).

Now, therefore, in consideration of the premises and to induce the disclosure of confidential information, the parties agree as follows:

1. The receiving party shall maintain for a period of three (3) years from the date of disclosure the confidentiality of the Confidential Information disclosed to it under this Agreement, provided such information is marked or designated as being confidential at the time of disclosure. The foregoing notwithstanding, Confidential Information provided to the receiving party by or on behalf of the disclosing party that, by its nature and content, would be readily recognized by a reasonable person to be confidential or proprietary to the disclosing party shall also be deemed Confidential Information of the disclosing party irrespective of any marking or designation. This term for confidentiality shall survive any termination of this Agreement. The COMPANY warrants that it will not disclose any trade secrets to AUBURN. The receiving party shall use the same level of care to prevent the use or disclosure of the Confidential Information as it exercises in protecting its own information of similar nature, provided that the level of care shall not be less than reasonable.
2. Confidential Information shall be used by the receiving party solely for the Purpose. The receiving party shall not use said Confidential Information for the benefit of the receiving party or for the benefit of other parties without the prior consent in writing of the disclosing party. The receiving party shall not perform, nor have performed, any tests or measurements on Confidential Information disclosed in the form of technology samples for the purpose of determining such samples' method(s) of manufacturing.
3. Confidential Information disclosed by one party to the other shall remain the property of the disclosing party, and shall be returned to the disclosing party, or destroyed by the receiving party, upon written request of the disclosing party. The receiving party may, however, retain one archival copy of the Confidential Information for the purpose of determining its obligations hereunder or for legal compliance purposes, except in the specific instance of technology samples which at the discretion of the disclosing party shall be either returned to the disclosing party upon request or destroyed and certified as such by the receiving party.
4. The disclosure of Confidential Information by one party to the other shall not constitute a grant by the disclosing party to the receiving party of any species of right, title, interest, or property in or to Confidential Information. No license or other right under any U.S. or foreign patent, copyright, or know-

how is granted or implied by this Agreement. Nothing in this Agreement shall restrict the disclosing party from using, disclosing, or disseminating its own Confidential Information in any way. Further, this Agreement is not intended to and does not create a partnership or joint venture relationship between the parties. Both parties agree that they will not use any trade name, service mark, or trademark of the other party or refer to the other party in any promotional activity or material without first obtaining the prior written consent of the other party.

5. The receiving party shall use reasonable efforts to disclose Confidential Information received by it only to those of its employees, agents, representatives, or related third parties who must be so informed to enable that party to accomplish the Purpose and who have been provided a copy of this fully executed Agreement and are bound by that party's obligations of confidentiality hereunder, or have entered into a confidentiality agreement with terms at least as restrictive as those herein.
6. The receiving party's obligations of confidentiality hereunder shall not apply to the following:
  - a. information which is now or hereafter becomes a part of the public domain other than as a result of a disclosure by receiving party in breach of this Agreement;
  - b. information known to the receiving party before disclosure to it by the disclosing party hereunder as evidenced by its records;
  - c. information given to the receiving party by a third party having a right to disclose the same without violating any obligation of confidentiality; or
  - d. information which is hereinafter independently developed by the receiving party without reference to or benefit from the Confidential Information received from the disclosing party; or
  - e. information which the receiving party is compelled to publicly disclose by judicial or administrative process, or by other mandatory requirements of law.
7. No amendment or modification of this Agreement shall be valid or binding on the parties unless made in writing and signed on behalf of each of the parties by their respective duly authorized officers or representatives. Further, the waiver by either party hereto of a breach or violation of any provision of this Agreement shall not operate as or be construed to constitute a waiver of any subsequent breach of the same or another provision hereof.
8. Neither party shall have the right to assign or otherwise transfer any right or interest herein to any other person, firm, corporation or association without the prior written consent of the other party.
9. This Agreement shall be construed, interpreted and governed in accordance with and under the jurisdiction of the laws of the State of Alabama, USA, notwithstanding the residence or principal place of business of any party, the place where this Agreement may be executed by any party or the provisions of any jurisdiction's conflict-of-laws principles.
10. The term of this Agreement shall be one (1) year from the Effective Date.
11. THE CONFIDENTIAL INFORMATION IS PROVIDED ON AN "AS IS" CONDITION. THE DISCLOSING PARTY MAKES NO WARRANTIES, EXPRESSLY, IMPLIEDLY OR OTHERWISE, AND SHALL NOT HAVE ANY LIABILITY, DIRECT OR INDIRECT, TO THE RECEIVING PARTY FOR ANY DAMAGES THAT MAY RESULT FROM THE ACCURACY, COMPLETENESS, OR UTILITY OF THE CONFIDENTIAL INFORMATION.

12. This Agreement may be executed in one (1) or more counterparts, each of which shall be an original. Any such counterpart, to the extent delivered by means of a facsimile machine, or by .pdf, .tif, .gif, .jpeg, or similar attachment to an electronic mail message, shall be treated in all manner and respects as an original executed counterpart and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person.
13. No disclosure or transfer of information, software, source code, equipment or materials identified on a US export control list (“Export Control-Listed Material”), such as the Commerce Control List at 15 CFR 774 and the US Munitions List at 22 CFR 121, is planned under this Agreement. In addition, no disclosure of any information which is subject to a security classification (“Classified Information”) is planned under this Agreement. Neither Export Control-Listed Material nor Classified Information will be disclosed or transferred without prior written amendment of this Agreement.
14. The above constitutes the full and complete Agreement in this matter by and between the parties hereto.

COMPANY

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

AUBURN UNIVERSITY

By \_\_\_\_\_  
for John M. Mason  
Vice President for Research & Economic Development  
Date: \_\_\_\_\_

**ACKNOWLEDGED and AGREED**

Acknowledgment and agreement by Auburn University personnel, employees, and/or students to be bound by the terms of the Mutual Non-disclosure Agreement having an effective date of \_\_\_\_\_, 20\_\_\_\_, between Auburn University and \_\_\_\_\_ (“\_\_\_\_\_”) who will have received and/or will have access to \_\_\_\_\_’s Confidential Information related to \_\_\_\_\_:  
\_\_\_\_\_:

Signature

Name, Title

Date

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